

REMARKS

I. Summary of the Office Action

The Office Action mailed November 13, 2008 ("the Office Action") made the following objections and/or rejections, each of which is addressed in more detail below:

Claims 1 and 3-15 were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

Claims 1, 3, 9-12, 16, 23-25, and 28-29 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0194115 ("Nordlicht") in view of U.S. Patent Application Publication No. 2003/0009387 ("Argust").

Claims 4, 7-8, 19, and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of U.S. Patent Application Publication No. 2002/0133447 ("Mastman").

Claim 18 was rejected under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of U.S. Patent Application Publication No. 2002/0147622 ("Drolet").

Claims 5-6 and 20-21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, further in view of Mastman, and further in view of Drolet.

Claims 13-15 and 26-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of U.S. Patent Application Publication No. 2002/0186826 ("Hsu").

II. Related Applications

The Applicant understands that the Examiner reviews the claims and prosecution history of related applications as they contain common subject matter. To this end, the Applicant reminds the Examiner that the present application is related through a common claim of priority to U.S. Patent Application Serial No. 11/417,516.

In addition, for the purposes of the present application, the Applicant hereby rescinds any disclaimer of claim scope that may have been (or may be) made during the prosecution of any related application. The Applicant respectfully requests examination of the instant claims

according to the claim language in light of the prior art without importing statements made by the Applicant in the prosecution of any related application.

III. Status of the Claims

The present application includes claims 1, 3-16, and 18-29. By this Response, claims 1 and 28 have been amended. Support for these amendments can be found throughout the application and therefore no new matter is added in this response.

IV. Claim Rejections – 35 U.S.C. 101

The Applicant now turns to the rejection of claims 1 and 3-15 under 35 U.S.C. 101 as being directed to non-statutory subject matter. More particularly, at page 3 the Office Action stated that these claims are “directed to method that is not linked to another statutory class, *i.e.*, it is directed to non-statutory subject matter.”

The Applicant respectfully disagrees that the claims as written are directed to non-statutory subject matter. However, in the interest of expediting prosecution, the Applicant has amended independent claim 1 (from which claims 3-15 depend) to more clearly recite that they are tied to another statutory class. In addition, the Applicant respectfully submits that these claims transform underlying subject matter.

Therefore, the Applicant respectfully requests reconsideration and withdrawal of this rejection.

V. Claim Rejections – 35 U.S.C. 103

The Applicant now turns to the rejection of claims 1, 3, 9-12, 16, 23-25, and 28-29 under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust. The Applicant respectfully submits that the proposed combination of Nordlicht and Argust does not teach or suggest the entirety of the features recited in the pending claims for at least the reasons discussed below.

Nordlicht has been discussed previously and for brevity that discussion will not be repeated here. The Office Action stated at page 5, and the Applicant agrees, that “Nordlicht does not show increasing the order quantity to an increased order quantity such that a possibility of the

desired order quantity getting filled is increased; and adjusting the order quantity based on a total quantity.” The Office Action then turns to Argust to provide these features.

Argust generally relates to an online catalog product availability updating system that pushes an availability date to the online catalog depending upon the status of capacity buckets in a scheduling application, as stated in paragraph [0002]. As discussed beginning at paragraph [0009], Argust provides a method of pushing changes in product shipment dates to a catalog that sends an original availability date for products to the catalog. A scheduling application conceptually maintains a capacity utilizing a series of capacity buckets to represent the product shipment dates. Each capacity bucket represents an additional shipment delay period. Argust decreases quantities in the capacity buckets as orders for the products are placed and increases quantities in the buckets as products are manufactured. In addition, a push signal is sent to the catalog when a capacity bucket reaches a specified level. This push signal includes a revised availability date for the product that is different from the original availability date by the shipment delay period.

Figure 2 of Argust, discussed beginning at paragraph [0024], illustrates capacity buckets along a time line. Each bucket represents a period of time in the future. A scheduling application monitors that status of the capacity buckets. As customer orders are placed, capacity is removed from the capacity buckets. When a capacity bucket becomes empty, capacity is withdrawn from the next capacity bucket, resulting in a change for an estimated shipment date. As discussed in paragraph [0028], a supply demand process determines additional manufacturing capability and the capacity buckets are refilled. If the supply demand process increased the manufacturing capability in a bucket that had become empty, the invention of Argust sends a push signal revising the shipment date. For example, if the supply demand process determined that 5 additional items can be shipped in a time period associated with an empty bucket (and increases the quantity in that bucket), then order can be filled from the bucket. The represents an earlier shipment date and this fact is pushed out to revise the shipment dates in the catalog. An increase in capacity above a threshold and the cancellation of previous orders may also result in a similar push of an earlier shipment date.

Thus, Argust discusses a technique for managing an estimated shipment date for an online catalog by utilizing capacity buckets which represent, for a particular time period, the amount of product that can be accommodated in that time period. As orders are placed, a bucket

is emptied of capacity, potentially increasing the estimate. Similarly, as more manufacturing capability becomes available, capacity can be added to a bucket, potentially lowering the estimate. These changes in the estimate are indicated to the online catalog through a push signal.

However, the Applicant respectfully submits that Argust does not show increasing the order quantity to an increased order quantity such that a possibility of the desired order quantity getting filled is increased. Rather, as discussed above, Argust is concerned with adjusting the capacity of a capacity bucket used for determining an estimated ship date. The capacity represents the amount of a product that can be provided for a particular time period. As orders are received, the capacity is decreased and as more manufacturing capability is increased, then the capacity of the bucket is increased. No mention is made of increasing an order quantity to increase the possibility of a desired quantity being filled, just altering the capacity in a capacity bucket for making the estimate.

In addition, the Applicant respectfully submits that Argust does not show adjusting the order quantity based on a total quantity in an order queue. Rather, as discussed above, Argust is concerned with adjusting the capacity of a capacity bucket based on orders that are received and manufacturing capacity available.

Accordingly, without conceding the propriety of the asserted combination, the Applicant respectfully submits that, even in view of the knowledge of one of ordinary skill in the art, for at least these reasons Argust does not cure the deficiencies of Nordlicht discussed above.

Independent claim 1 recites “increasing at the electronic exchange the order quantity to an increased order quantity such that a possibility of the desired order quantity getting filled is increased” and “dynamically adjusting at the electronic exchange the order quantity based on a total quantity in the order queue at the price.” Independent claims 16, 28, and 29 recite similar features. Nordlicht does not teach or suggest such features. Argust also does not teach or suggest such features. Thus, the proposed combination of Nordlicht and Argust cannot and does not teach or suggest the entirety of the features recited in the pending claims. Therefore, the Applicant respectfully submits that independent claims 1, 16, 28, and 29 should be allowable over the cited art of record for at least the reasons discussed above.

With respect to claims 3, 9-12, 16, and 23-25, these claims depend from independent claims 1 and 16. The Applicant respectfully submits that at least because claims 1 and 16 should

be allowed for the reasons discussed above, claims 3, 9-12, 16, and 23-25 should also be allowed.

The Applicant now turns to the rejection of claims 4, 7-8, 19, and 22 under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of Mastman. Mastman generally relates to establishing a stock portfolio wherein all of the stocks are selected by a computer program according to predetermined parameters and characteristics. The Applicant respectfully submits that Mastman fails to cure the deficiencies of Nordlicht and Argust discussed above. Thus, the Applicant respectfully submits that the proposed combination of Nordlicht, Argust, and Mastman, does not teach or suggest the entirety of the features recited in the pending claims.

Claims 4, 7-8, 19, and 22 depend from independent claims 1 and 16. The Applicant respectfully submits that at least because claims 1 and 16 should be allowed for the reasons discussed above, claims 4, 7-8, 19, and 22 should also be allowed.

The Applicant now turns to the rejection of claim 18 under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of Drolet. Drolet generally relates to systems and methods for allowing organizations to receive, analyze, and respond to real-time information from supply chain partners through the monitoring of configurable supply chain parameters. The Applicant respectfully submits that Drolet fails to cure the deficiencies of Nordlicht and Argust discussed above. Thus, Applicant respectfully submits that the proposed combination of Nordlicht, Argust, and Drolet, does not teach or suggest the entirety of the features recited in the pending claims.

Claim 18 depends from independent claim 16. The Applicant respectfully submits that at least because claim 16 should be allowed for the reasons discussed above, claim 18 should also be allowed.

The Applicant now turns to the rejection of claims 5-6 and 20-21 under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, further in view of Mastman, and further in view of Drolet. The Applicant respectfully submits that neither Mastman nor Drolet cure the deficiencies of Nordlicht and Argust as discussed above. Thus, the Applicant respectfully

submits that the proposed combination of Nordlicht, Argust, Mastman, and Drolet, does not teach or suggest the entirety of the features recited in the pending claims.

Claims 5-6 and 20-21 depend from independent claims 1 and 16. The Applicant respectfully submits that at least because claims 1 and 16 should be allowed for the reasons discussed above, claims 5-6 and 20-21 should also be allowed.

The Applicant now turns to the rejection of claims 13-15 and 26-27 under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of Hsu. Hsu generally relates to automating aspects of offering a service upgrade to a service user based on an evaluation of the service user's utilization history and the system capacity. The Applicant respectfully submits that Hsu fails to cure the deficiencies of Nordlicht and Argust discussed above. Thus, the Applicant respectfully submits that the proposed combination of Nordlicht, Argust, and Hsu, does not teach or suggest the entirety of the features recited in the pending claims.

Claims 13-15 and 26-27 depend from independent claims 1 and 16. The Applicant respectfully submits that at least because claims 1 and 16 should be allowed for the reasons discussed above, claims 13-15 and 26-27 should also be allowed.

VI. Conclusion

In general, the Office Action makes various statements regarding the pending claims and the cited art that are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (for example, if such statements should become relevant by appearing in a rejection of any current or future claim).

All the stated grounds of objection and rejection have been respectfully traversed, accommodated, or rendered moot. The Applicant therefore submits that the present application is in condition for allowance. If the Examiner believes that further dialog would expedite consideration of the application, the Examiner is invited to contact Trading Technologies in-house Patent Counsel Adam Faier at 312-698-6003, or the undersigned attorney or agent.

Respectfully submitted,

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